Court No.1.

Civil Misc. Writ Petition No. 1009 (S/S) of 2001.
(No. 22958 of 2000).

President/Secretary, Ordanance
Factory Co-operative Credit
Society Ltd., Dehradun. …….Petitioner.

Versus

The Conciliation Officer,
Dehradun and another. ……Respondents.

Hon'ble P.C. Verma, J.

This writ petition has been filed by the petitioner seeking a writ of certiorari quashing the impugned orders dated 03.4.2000 and 06.4.2000 and also prayed for a writ of mandamus commanding the respondents not to proceed with the proceedings pending before the Labour Court and to drop the proceedings.

The petitioner is a Co-operative Credit Society. The Society terminated the services of respondent No.2 Sri Sunil Kumar Gupta. The employee/workman filed a suit against the termination order. The suit was dismissed. Thereafter the respondent No. 2 preferred first appeal which is pending. During the pendency of the first appeal, respondent No. 2 raised a labour dispute under Sec. 2-A of U.P. Industrial Disputes Act before the Conciliation Officer, who, after hearing both the parties, registered the case by the impugned order dated 03.04.2000, contained in Annexure-I to the writ petition, under Sec. 2-A of the U.P. Industrial Disputes Act and thereafter issued notice dated 06.04.2000 for necessary inquiry into the matter, so that the dispute may be settled between the parties and fixed 02.5.2000 for appearance of the parties.

The petitioner has challenged the proceedings before the Conciliation Officer under the U.P. Industrial Disputes Act on the grounds (a) that in view of the provisions of Section 135 of U.P. Co-operative Societies Act, the dispute could not be raised under Sec. 2-A of the U.P. Industrial Disputes Act as by virtue of this Section the application of U.P. Industrial Disputes Act is excluded. The second ground of challenge of the petitioner is (b) that dispute, if any, between the Co-operative Society and its employees can be settled under Section 70 of the U.P. Co-operative Societies Act. Therefore, the proceeding initiated by Conciliation Officer is barred as remedy is available under the Uttar Pradesh Co-operative Societies Act itself.

The learned counsel for the respondent No.2 Sri Gopal Narain submitted that the provisions of Section 135 of the U.P. Co-operative Societies Act has not been enforced yet in Uttar Pradesh. Therefore, bar contained in Section 135 of the U.P. Co-operative Societies Act does not operate. He relied on three judgments of the Allahabad High Court i.e. (i) 1988 UPLBEC, page 555, Mauranipur Kisan Sahkari Sewa Samiti, Mauranipur, District Jhansi versus State of U.P. & others, (ii) F.L.R. 1993 (67), page 87, Sadhan Sahkari Samiti Basantpur Ltd. versus The Presiding Officer, Labour Court and another and (iii) 1999 (81) FLR, page 817, Sahkari Ganna Vikas Samiti Ltd. versus State of U.P. & others. In all these judgments, it has been noticed by the Allahabad High Court that the provisions of Section 135 of U.P. Co-operative Societies Act have not been enforced yet as no

Notification has been issued by the State Government bringing into force the Section 135 of the U.P. Co-operative Societies Act. Therefore, the question of ouster of jurisdiction to the Labour Court is unsustainable. Rather the provisions of Regulation-103 of U.P. Co-operative Societies Employees, Service Regulations, 1975 provides that the regulation which are inconsistent to the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, workmen compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any Co-operative Society or class of Co-operative Societies, shall be deemed to be inoperative. The Hon'ble Apex Court in Vikramaditya Pandey versus Industrial Tribunal, Lucknow reported in 2001 (88), F.L.R. page 741 considered the Regulation 103 of the U.P. Co-operative Societies Employees' Service Regulations, 1975 and held as under :-

> "By plain reading of the said Regulation it is clear that in case of inconsistency between the Regulations and the provisions of the Industrial Disputes Act, 1947, the State Act, the workmen Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative socities, to that extent Regulations shall be deemed to be inoperative. In other words, the inconsistent provisions contained in the Regulations shall be inoperative, not the provisions of the other statutes mentioned in the Regulation 103."

Therefore, in view of the aforesaid settled position, the first argument of the petitioner fails and is rejected.

The second ground of challenge of the petitioner is also not tenable in view of the law

laid down by the Hon'ble Apex Court in Co-operative Central Bank Ltd. & others versus Additional Industrial Tribunal, Andhra Pradesh Hyderabad and others, reported in 1970 Supreme Court, page 245 and the Gujarat State Land Development Bank Ltd. versus P.R. Mankad and another, reported in 1979 Supreme Court, page 1203. The Hon'ble Apex Court, while considering Secs. 61 & 62 of Andhra Pradesh Co-operative Societies Act which are parameteria Sections 70 & 71 of U.P. Co-operative Societies Act, 1965, has held as under :-

"Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred for decision to the Registrar under S. 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an Industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the relief claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects , such as laying down the conditions of service of its employees, can be said to be a part of its

business , it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society. Further, the position is clarified by the provisions of Sub-section (4) of Section 62 of the Act which limit the power to be exercised by the Registrar, when dealing with a dispute referred to him under Section 61, by a mandate that he shall decide the dispute in accordance with the provisions of the Act and the Rules and bye-laws. On the face of it, the provisions of the Act, the rules and the bye-laws could not possibly permit the Registrar to change conditions of service of the workmen employed by the society. For the purpose of bringing facts to our notice in the present appeals, the Rules framed by the Andhra Pradesh Government under the Act, and the bye-laws of one of the appeallant Banks have been placed on the Paper-books of the appeals before us. It appears from them that the conditions of service of the employees of the Bank have all been laid down by framing special bye-laws. Most of the conditions of service, which the workmen want to be altered to their benefit, have thus been laid down by the bye-laws, so that any alteration in those conditions of service will necessarily require a change in the bye-laws. Such a change could not possibly be directed by the Registrar when, under Section 62 (4) of the Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws. It may also be noticed that a dispute referred to the Registrar under Section 61 of the Act can even be transferred for disposal to a person who may have been invested by the Government with powers in that behalf, or may be referred for disposal to an arbitrator, when deciding the dispute, will also be governed by the mandate in Section 62 (4) of the Act, so that he will also be bound to reject the claim of the workmen which is nothing else than a request for alteration of conditions of service contained

in the bye-laws. It is thus clear that, in respect of the dispute relating to alteration of various conditions of service, the Registrar or other person dealing with it under Section 62 of the Act is not competent to grant the relief claimed by the workmen at all. On the principle laid down by this Court in the case of the Deccan Merchants Co-operative Bank Ltd. , Civil Appeal No. 358 of 1967, D/-29.8.1968- (AIR 1969 SC 1320) (supra) therefore, it must be held that this dispute is not a dispute covered by the provisions of Section 61 of the Act. Such a dispute is not contemplated to be dealt with under Section 62 of the Act and must, therefore, be held to be outside the scope of Sction 61."

Following the aforesaid dictum, the Hon'ble Supreme Court in case of Gujarat Co-operative Land Development Bank Ltd. versus P.R.Mankad and another has held as under :-

> "Now, let us turn to the nature of the dispute raised by the second respondent. Is it a dispute relating to a right which he could establish by filing a suit in a Civil Court ?- assuming for the moment that nothing in the relevant Co-operative Societies Act is a bar to such a suit. The answer must be in the negative. The respondent is not claiming a civil right arising from the contract of employment with the appellant Bank. What he is claiming is not enforcement of any term of the contract of his employment on the part of his employer. He is alleging that his services have been terminated unfairly and vindictively because of his legitimate trade union activities, as an act of victimization. The relief claimed by him is of reinstatement in service with back wages. The rights and reliefs which he is claiming could not be determined and granted by a civil court in a suit. As Luding Teller puts it, "a Court of Law proceeds on the footing that no power exists in the Courts to make contracts for people and the parties must

make their limit of power when they enforce contracts which the parties had made. "(quoted with approval in Rohtas Industries Ltd. v. Brijnandan Pandey, 1956 SCR 800; (AIR 1956 SC1)). The rights claimed by the second respondent are those which are conferred on workmen and employees under the Bombay Industrial Relations Act,, to ensure social justice. Such rights which do not stem from the contract of employment can be enforced only in the Labour Court constituted under the B.I.R. Act. The Labour Court is competent to grant the relief of reinstatement claimed by the respondent, while in view of Section 21 (b) of the Specific Relief Act , then in force, the Civil Court was not competent to grant that relief." (see para-26).

The Hon'ble Supreme Court has further held that,

"Be that as it may, what has been directly bidden 'out-of-bounds' for the Registrar by the very scheme and object of the Act, cannot be indirectly unducted by widening the connotation of 'management'. A construction free from contextual constraints, having the effect of smuggling into the circumscribed limits of the expression 'any dispute', a dispute which from its very nature is incapable of being resolved by the Registrar, has to be eschewed. Thus considered a dispute raised against the Society by its discharged servant claiming reliefs such as reinstatement in service with back wages, which are not enforceable in a Civil Court is outside the scope of the expression 'touching the management of the Society' used in Section 96(1) of the Act of 1961, and the Registrar has no jurisdiction to deal with and determine it. Such a dispute squarely falls within the jurisdiction of the Labour Court under the B.I.R.Act," (See para-37).

In view of the aforesaid law laid down by the Hon'ble Apex Court in the aforesaid two judgments the submission of the learned counsel for the petitioner is not tenable and the second ground of challenge also fails and is rejected.

For the reasons recorded above, the writ petition fails and is hereby dismissed. No order as to costs.

Sd/-

7.5.2001
P. Singh